

**IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR**

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ORDER

**Jaitsar Kray Vikray Sahakari
Samiti Ltd.
Vs.
Judge, Labour Court,
Sri Ganganagar & Ors.**

**S.B. CIVIL WRIT PETITION NO.381/2002
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA.**

DATE OF ORDER :: **18th September, 2006**

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.K.S. Chauhan, Advocate for the petitioner.
Mr.K.S. Yadav, Advocate for the respondents.

BY THE COURT

This writ petition has been filed by the petitioner Jaitser Kray Vikray Sahakari Samiti Ltd. assailing the award dated 26th June, 2001 whereby the learned labour court has declared the removal of the respondent-workman made by the petitioner on 07.09.1992 as illegal and directed for his reinstatement with

25% back wages.

The case of the workman is that he was appointed as sales man in the services of the Management on 07.08.1981 and continuously worked in their services up to 06.09.1992. The Management however suddenly removed him from service without making compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'). He therefore prayed that the action of the Management in terminating his services be declared illegal and they may be directed to reinstate him with full back wages.

This was contested by the Management whose case was that the workman was initially engaged for a period of three months from 07.08.1981 to 26.10.1982 and there were number of breaks thereafter in his service. It was therefore denied that he continuously worked from 07.08.1981 to 06.09.1982. It was contended that the retrenchment of the petitioner was made after making compliance of the provisions of Section 25-F of the Act of 1947. Payment of notice pay of one month and payment of compensation of Rs.6874.80 paisa (notice pay of Rs.1718.70 paisa) and retrenchment compensation of Rs.5156.10 paisa was made to the workman by a cheque on 04.09.1992. A registered letter was sent to him on 04.09.1992 which he refused to

accept. Copies of AD receipt and Postal receipt were produced before the court. The Management also produced the evidence to the effect that the amount of compensation and notice pay was offered to the workman but he declined to receive the same. The Management also pleaded before the learned labour court the decision to dispense with the services of the workman was based on resolution of the Board of Directors dated 20.08.1992 wherein it was decided to dispense with the services of workman Mool Chand because the Society was running into losses. However subsequently notice was given to the workman on 13.05.1993 again for his re-appointment but the workman refused to acknowledge the said notice.

The learned labour court held that since the petitioner had completed 10 years service, the Management was required to pay to him 15 days' wages for each of these 10 years which should be atleast five months' wages as compensation with notice pay of one month for making compliance of Section 25-F of the act of 1947. Admittedly the Management has paid the amount of salary of three months by way of compensation and compliance of Section 25-F of the Act of 1947 was therefore not made. On the question of notice served upon the workman requiring him to rejoin his services, the learned labour court held that when the retrenchment itself has been found to be illegal,

this question was not required to be decided.

I have considered the arguments advanced by both the learned counsel and perused the record.

In the present case the Management decided to terminate services of the workman on account of the resolution passed by the Board of Directors in their meeting held on 20.08.1992. Consequential office order which was served on the respondent-workman together with notice pay and compensation has been placed on record as Annexure-4. It would be evident from this order that the Board of Directors considering recurring losses suffered by the Samiti, decided to reduce establishment expenditures. It has been contended that subsequently notice was give to the petitioner on 13.05.1993 asking him to appear in the office of the Samiti at 11:00 AM on 15.05.1993 but he failed to respond. In fact the Management has produced the affidavit of one Rajkumar who deposed that the Manager of the Samiti has come to the shop of respondent-workman Mool Chand which was being run by him in the name and style of M/s Madan Clothes Stores, Jaitser. Shri Desraj has offered to serve a copy of the order for reengaging him in the services of the Samiti, but Mool Chand declined to accept the same. At that time Krishan Lal was also presented in the shop of the respondent-workman. In the

cross-examination, Rajkumar sated that the shop of Mool Chand was situated after about 10-15 shops of his shop. Desraj has also filed an affidavit in which he stated that when order was sought to be served on workman at his shop on 13.05.1993, he declined to accept the same. He stated that he himself went to serve this order to the respondent-workman but he refused to accept the same in the presence of Krishan Lal and Rajkumar. He has also stated that payment of compensation and notice pay was made to the respondent-workman.

In the present case, not much evidence has come on record which can prove that respondent-workman was in continuous service of the Management from 07.08.1991 to 26.09.1992. It has also not been brought on record as to by adopting what procedure the appointment of the respondent-workman was made. When services of the respondent-workman were dispensed with because Samiti was running in losses and had been left with limited resources therefore its Board of Directors decided to save the expenditures of establishment. In fact the Samiti terminated services of the respondent-workman in purported compliance of Section 25-F of the Act of 1947. The learned labour court however found that instead of paying the compensation of five months, only three months compensation was paid. This action was based on the finding that the workman

had continuously worked with the Management from 07.08.1981 to 06.09.1992. The period of 14 years have since gone by from the date of retrenchment of the workman. When the Management wanted to dispensed with services of the workman for a valid reason of their financial constraints, it served upon the workman the notice pay and compensation. Even if instead of paying the salary of five months, the Management paid to the workman three months, the workman at best could award him payment of lump sum amount in lieu of compensation.

The Division Bench of this Court in State of Rajasthan & Ors. vs. Rashid Mohammad, reported in 2004 (5) WLC 436 (Raj.) was dealing with the case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.02.1990 and was finally removed on 17.05.1994. The Division Bench while taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs.50,000/- as compensation for full and final settlement of all his claims. In doing so the learned Division Bench of this Court relied upon the various judgments of Hon'ble Supreme Court which may be summarized as under:-

(1) In Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd. AIR 1979 SC 95, the Hon'ble Supreme Court held that the Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make the reinstatement inexpedient or improper.

(2). In Chandu Lal Vs. The management of M/s. PAN American World Airways, AIR 1985 SC 1128, the Apex Court, instead of granting the relief of reinstatement, granted compensation.

(3). In Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra, AIR 1994 SC 112, the Hon'ble Supreme Court considered the aspect of long lapse of time between the termination and the date of Award and held that the grant of compensation in lieu of reinstatement was proper.

(4). In Sain Steel Products Vs. Naipal Singh & ors., AIR 2001 SCW 2426, the Hon'ble Apex Court granted a sum of Rs.50,000/- to the workman in lieu of reinstatement or back wages on the ground that there had been an inordinate delay as the services had been terminated long back.

(5). In O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & Ors., (1986) 4 SCC 337, the Hon'ble Supreme Court propounded the formula to award compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant therein, to be a reasonable amount to be awarded in lieu of reinstatement as the appellant therein had served for eight years.

(6). In Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court & Ors., AIR 1994 SC 131, the Hon'ble Supreme Court granted a lump sum

amount of Rs.50,000/- as compensation in full and final settlement of the claim and in lieu of reinstatement and consequential benefits to the workman.

Similarly in the case of Arjun Singh & 4 Ors. vs. Labour Court, Jodhpur & Ors., reported in 2004 (4) WLC 145 (Raj.) also the Division Bench of this Court was dealing with a case in which the workman Arjun Singh was appointed on 01.01.1988 and was removed from service on 01.04.1990. Apart from this, similar case of two more workmen was also considered therein. The matter came to the learned Labour Court on a reference being made to it by the appropriate Government. The Labour Court found that the termination of workman was in violation of Section 25-F of the Industrial Disputes Act. However, instead of directing reinstatement of the workman it granted compensation in lieu of reinstatement. While dealing with the said case, the Division Bench of this Court made the following observations:-

"5. The appellants did not go through a process of selection and were merely appointed on daily wages basis. The time lag in each case between the passing of the award and the date of termination is quite a substantial one. Again between date of termination of services of the appellants and as of now several years have gone by. In the circumstances the Labour Court and the learned Single Judge were right in not foisting the appellant on the employer after such long spells of time. The appellants cannot be directed to be reinstated now as they have been out of touch with their respective jobs of long. It is well known that faculties rust when they are not used for long.

An employee who is out of job for number of years, loses his proficiency, productivity and efficiency. In case the appellants are directed to be reinstated after several years it will lead to complex situations. Not only question of their seniority, promotion and emoluments would arise, it will also affect the seniority and chances of promotion of employees who have been working continuously with respondents after the termination of the services of the appellants.

6. We are conscious of the fact that the normal rule is to direct reinstatement of a workman whose services have been terminated in violation of the industrial law, but reinstatement cannot be directed in every case. The question whether an employee should be reinstated or not depends upon various factors viz. (1) The nature of employment; (2) the period between the date of appointment and date of termination i.e. length of service; (3) the period between the date of termination and date of award; (4) the period between the date of termination and the conclusion of the proceedings. In case a person is appointed for a short period of time without making him to through a process of selection and the gap between the date of termination and the award/conclusion of proceedings is a large one, ordinarily the employee should be awarded compensation in lieu of reinstatement when it is found that his termination was in violation of the provisions of Section 25F of the Industrial Disputes Act.”

The Hon'ble Supreme Court in the case of Ratan Singh Vs. Union of India & Anr. reported in (1997) 11 SCC 396, wherein nearly 20 years had elapsed from the date when the services of the workman were terminated in violation of Section 25-F of the Industrial Disputes Act, while directing the payment of

compensation in lieu of reinstatement observed as under:-

"The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement."

In the facts of the present case, the learned labour court ought not to have directed reinstatement of the workman especially when his retrenchment was made way back on 07.09.1992 and award was passed on 26.06.2001 almost nine years thereafter and five more years have gone by since then. Counting from the date of the retrenchment now, the period of 14 years has rolled by since then. Ends of justice would be met if instead of reinstatement, the Management is directed to pay lump some amount to the workman.

Accordingly, the impugned award in so far as it has directed reinstatement of the petitioner with continuity and 25% back wages is set aside and the respondent-workman is held entitled to receive a sum of Rs.75,000/- as lump sum payment in lieu of reinstatement.

Accordingly, the writ petition is partly allowed with no order as to costs.

[MOHAMMAD RAFIQ],J.

Aswini/-